

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANDY LASHAWN FORTNER,

Plaintiff,

v.

LAKE COUNTY JAIL, et al.,

Defendants.

Case No. [25-cv-02506-HSG](#)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a pre-trial detainee¹ currently housed at Lake County Jail, has filed a *pro se* action pursuant to 42 U.S.C. § 1983. His complaint (Dkt. No. 12) is now before the Court for review pursuant to 28 U.S.C. § 1915A. Plaintiff has been granted leave to proceed *in forma pauperis* in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). Under 28 U.S.C. § 1915(e), “the court shall dismiss the case at any time if the court determines that . . . the action or appeal . . . is frivolous or malicious.” 28 U.S.C. § 1915(e)(2)(B)(i). A claim that is incomprehensible may be dismissed as frivolous as it is without an arguable basis in law. *See Jackson v. Arizona*, 885 F.2d 639, 641 (9th Cir. 1989). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a

¹ The Court presumes that Plaintiff is a pre-trial detainee as he states that his criminal case is ongoing. Dkt. No. 1 at 2.

defendant who is immune from such relief. *See* 28 U.S.C. § 1915A(b)(1), (2). *Pro se* pleadings must, however, be liberally construed. *See United States v. Qazi*, 975 F.3d 989, 993 (9th Cir. 2020).

Federal Rule of Civil Procedure 8(a)(2) requires only “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). “Specific facts are not necessary; the statement need only “‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.’” *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (citations omitted). While Rule 8 does not require detailed factual allegations, it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. *Ashcroft v. Iqbal*, 556 U.S. 662, 677–78 (2009). A pleading that offers only labels and conclusions, or a formulaic recitation of the elements of a cause of action, or naked assertions devoid of further factual enhancement does not suffice. *Id.*

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Dismissal with Leave to Amend

The complaint names as defendants “Lake County Jail, Lake County Jail Staff + Aid Tech, Ms. Peggy Perry.” The complaint makes the following allegations. Plaintiff was retaliated against after he filed grievances regarding Aid Tech Peggy Perry, Deputy Cline, and Deputy Hodges. Plaintiff was denied his medical rights. Deputies mimicked Plaintiff and made fun of him, which made him feel inhuman. Medical staff called Plaintiff the boy who cried wolf. When Plaintiff sends out mail, it is returned to him. The jail is not paying for Plaintiff’s mail to go out. Sgt. Jacobs, Lt. Holland, and Capt. Wells told deputies not to send out Plaintiff’s mail and not to sign Plaintiff’s legal work. Plaintiff’s grievances are all denied. The Aid Tech refused to answer when Plaintiff pressed his intercom button, stating that Plaintiff was argumentative. Aid tech Perry deliberately denied Plaintiff and other inmate “mental health coping skills rights” and retaliated against Plaintiff to try to murder him and deny him medical attention. Aid tech Perry lied to Sgt. Jacobs, Lt. Holland, and Capt. Wells that Plaintiff never pressed the intercom button. *See*

1 *generally* Dkt. No. 12.

2 The Court DISMISSES the complaint because it suffers from various deficiencies, some of
3 which the Court identifies below.

4 First, the complaint does not allege any violation of federal law or the federal Constitution,
5 as is needed to state a claim under 42 U.S.C. § 1983 and for federal subject matter jurisdiction.

6 Second, the complaint violates the joinder rule set forth in Fed. R. Civ. P. 20. Fed. R. Civ.
7 P. 20(a)(2) provides that all persons “may be joined in one action as defendants if: (A) any right to
8 relief is asserted against them jointly, severally, or in the alternative with respect to or arising out
9 of the same transaction, occurrence, or series of transactions or occurrences; and (B) any question
10 of law or fact common to all defendants will arise in the action.” Fed. R. Civ. P. 20(a)(2). The
11 upshot of these rules is that “multiple claims against a single party are fine, but Claim A against
12 Defendant 1 should not be joined with unrelated Claim B against Defendant 2.” *George v. Smith*,
13 507 F.3d 605, 607 (7th Cir. 2007). In this action, Plaintiff may only seek relief for incidents that
14 (1) arise out of the same occurrence; and (2) have a common question of law or fact common to all
15 defendants. For example, Plaintiff’s allegations regarding Aid Tech Perry failing to respond when
16 he pressed the intercom button is a separate event from the alleged mail tampering or mimicking.
17 Plaintiff needs to choose the claims he wants to pursue in this action that meet the joinder
18 requirements. Plaintiff should file separate actions for the claims that arise out of separate
19 occurrences.

20 Third, Plaintiff has only proffered conclusory allegations. It is unclear how the mimicking
21 or refusal to answer an intercom button harmed Plaintiff to the extent that Plaintiff’s constitutional
22 rights were violated. Plaintiff is cautioned that not every unpleasant interaction with jail officials
23 gives rise to a constitutional violation. Allegations of verbal harassment and abuse fail to state a
24 claim cognizable under 42 U.S.C. § 1983. *See Freeman v. Arpaio*, 125 F.3d 732, 738 (9th Cir.
25 1997) *overruled in part on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884-85 (9th Cir.
26 2008); *Rutledge v. Arizona Bd. of Regents*, 660 F.2d 1345, 1353 (9th Cir. 1981), *aff’d sub nom.*
27 *Kush v. Rutledge*, 460 U.S. 719 (1983). Differences of opinion in medical treatment also do not
28 state an Eighth Amendment claim. *See Simmons v. G. Arnett*, 47 F.4th 927, 935 (9th Cir. 2022).

Fourth, to the extent that Plaintiff seeks to sue Lake County Jail or Lake County Jail Medical, Plaintiff is cautioned that there is no respondeat superior liability under § 1983, i.e., liability solely because a defendant is a supervisor or otherwise responsible for the actions or omissions of another. *See Mortimer v. Baca*, 594 F.3d 714, 721 (9th Cir. 2010). If Plaintiff is seeking to hold the Lake County Jail liable for constitutional violations, he is alleging a municipal liability claim against Lake County, and the proper defendant for Plaintiff's municipal liability claim would be Lake County itself. *Cf. Vance v. County of Santa Clara*, 928 F. Supp. 993, 996 (N.D. Cal. 1996) (dismissing Santa Clara County Department of Corrections from Section 1983 action and noting that "[t]he County is a proper defendant in a § 1983 claim, an agency of the County is not"); *Stump v. Gates*, 777 F.Supp. 808, 816 (D. Colo. 1991) (noting that, "although some courts have overlooked it, naming a municipal department as a defendant is not an appropriate means of pleading a § 1983 action against a municipality"). However, in order to state a cognizable municipal liability claim against Lake County, Plaintiff must allege facts from which it can be reasonably inferred that the constitutional violations were because of an expressly adopted official Lake County policy, a long-standing Lake County practice or custom, or the decision of a final Lake County policymaker. *Ellins v. City of Sierra Madre*, 710 F.3d 1049, 1066 (9th Cir. 2013) (citing *Monell v. Dep't of Soc. Svcs.*, 436 U.S. 658 (1978)).

In the interests of justice, the Court grants Plaintiff leave to file an amended complaint.

C. Addressing Plaintiff's Frequent Filings

Plaintiff has filed at least ten lawsuits in the Central District of California and this district since January 2025. In these lawsuits, after filing the initial complaint, Plaintiff also files letters that inform the Court of any wrongs that he allegedly suffers as he experiences them.

To assist Plaintiff in effectively seeking relief for alleged mistreatment, the Court provides Plaintiff the following guidance.

First, in this Court, Plaintiff should only file actions over which the Court has jurisdiction. Federal courts are courts of limited jurisdiction, which means that the Court is limited in the issues it may consider and relief it may provide. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). For this Court to have jurisdiction over an action, there must be either (1)

1 diversity jurisdiction, i.e. the defendants must be from a state other than California and the amount
 2 in controversy be over a certain amount, or (2) federal question jurisdiction, i.e., the legal claim
 3 involves a federal law, the federal Constitution, or a United States treaty. 28 U.S.C. §§ 1331,
 4 1332. Plaintiff may seek relief in this Court only for actions or inactions that violate federal law
 5 or the federal Constitution. The mere fact that Plaintiff has been poorly treated does not, without
 6 more, state a violation of federal law or the federal Constitution.

7 Second, Plaintiff should refrain from filing duplicative or repetitious litigation. Plaintiff
 8 should not file multiple lawsuits regarding the same event or issue. Duplicative or repetitious
 9 litigation of virtually identical causes of action is subject to dismissal under 28 U.S.C. § 1915 as
 10 malicious. *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988). An *in forma pauperis*
 11 complaint that merely repeats pending or previously litigated claims may be considered abusive
 12 and dismissed under Section 1915. *Cato v. United States*, 70 F.3d 1103, 1105 n.2 (9th Cir. 1995);
 13 *Bailey*, 846 F.2d at 1021. An *in forma pauperis* complaint repeating the same factual allegations
 14 asserted in an earlier case, even if now filed against new defendants, therefore is subject to
 15 dismissal as duplicative. *Bailey*, 846 F.2d at 1021; *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th
 16 Cir. 1975).

17 Third, Plaintiff is cautioned that filing more than three lawsuits that fail to state a claim can
 18 result in being denied leave to proceed *in forma pauperis* in future lawsuits. 28 U.S.C. § 1915(g)
 19 provides that a prisoner may not proceed *in forma pauperis* in a civil action “if the prisoner has, on
 20 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or
 21 appeal in a court of the United States that was dismissed on the grounds that it is frivolous,
 22 malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under
 23 imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). Without the ability to proceed
 24 *in forma pauperis*, Plaintiff would need to pay the full \$405 filing fee before he could proceed
 25 with a lawsuit. Before filing an action, Plaintiff should research the relevant law to determine
 26 whether he has a legal cause of action.

27 Fourth, Plaintiff should not file letters with the Court that inform the Court of events as
 28 they happen. The only claims that will be litigated in this action are any cognizable claims pled in


1 the operative complaint. Currently there is no operative complaint. Plaintiff cannot add events to
2 his complaint via letters. Plaintiff should therefore refrain from writing letters to the Court to
3 report on events as they happen as these letters have no legal effect, and the Court cannot take
4 action on letters. Filing numerous letters clutters the docket and may delay the Court's ability to
5 address meritorious requests or issues.

6 CONCLUSION

7 For the foregoing reasons, the Court DISMISSES the complaint with leave to amend.
8 Within twenty-eight (28) days of the date of this order, Plaintiff shall file an amended complaint
9 that addresses the identified deficiencies. The amended complaint must include the caption and
10 civil case number used in this order, Case No. C 25-02506 HSG (PR) and the words "AMENDED
11 COMPLAINT" on the first page. If using the court form complaint, Plaintiff must answer all the
12 questions on the form in order for the action to proceed. An amended complaint completely
13 replaces the previous complaints. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 925 (9th Cir.
14 2012). Accordingly, Plaintiff must include in his amended complaint all the claims he wishes to
15 present and all of the defendants he wishes to sue, and may not incorporate material from the prior
16 complaint by reference. Failure to file an amended complaint in accordance with this order in the
17 time provided will result in dismissal of this action without further notice to Plaintiff. The Clerk
18 shall include two copies of the court's complaint form with a copy of this order to Plaintiff.

19 **IT IS SO ORDERED.**

20 Dated: 5/6/2025

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22 HAYWOOD S. GILLIAM, JR.
23 United States District Judge
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